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6 CITY OF OAKLAND, SGT. PATRICK GONZALES,
and CHIEF OF POLICE WAYNE TUCKER
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 OAKLAND DIVISION
11

12 JOSE BUENOSTROS, SR. and MARIA
BUENOSTROS, individually and as
13 successors in interest to JOSE
BUENOSTROS, JR.
14

15 Plaintiffs,

16 v.

17 CITY OF OAKLAND, a municipal
corporation, WAYNE TUCKER, Police
18 Chief, TIMOTHY DELAVEGA, RANDOLPH
BRANDWOOD, ROBERT ROCHE and
19 ERIC MELINA, Police Officers, and Does 1
through 20,
20

21 Defendants.

Case No. C 09-00786 JSW

**DEENDANTS' ANSWER TO
COMPLAINT**

22 Defendants CITY OF OAKLAND, WAYNE TUCKER, POLICE CHIEF, TIMOTHY
23 DELEVEGA, RANDOLPH BRANDWOOD, ROBERT ROCHE AND ERIC MELINA hereby
24 answer, object, and otherwise respond to the Complaint on file herein as follows.
25
26

INTRODUCTION

1
2 1. Defendants are without knowledge or information sufficient to form a
3 belief as to the truth of the allegations in this paragraph and on that basis, deny each and
4 every allegation contained herein.

5 2. Defendants deny the allegations set forth in this paragraph.

JURISDICTION

6
7 3. Defendants are without knowledge or information sufficient to form a belief
8 as to the truth of the allegations in this paragraph and on that basis, deny each and every
9 allegation contained herein.

10 4. Defendants are without knowledge or information sufficient to form a belief
11 as to the truth of the allegations in this paragraph and on that basis, deny each and every
12 allegation contained herein.

PARTIES AND PROCEDURE

13
14 5. Defendants are without knowledge or information sufficient to form a belief
15 as to the truth of the allegations in this paragraph and on that basis, deny each and every
16 allegation contained herein.

17 6. Defendants admit the allegations set forth in this paragraph.

18 7. Defendants admit that Defendants TIMONTY DELAVEGA, RANDOLPH
19 BRANDWOOD, ROBERT ROCHE, and ERIC MELINA were police officers employed by
20 defendant CITY OF OAKLAND. Defendants deny the remaining allegations set forth in
21 this paragraph.

22 8. Defendants admit that WAYNE TUCKER was employed as the Police Chief
23 of the CITY OF OAKLAND. Defendants deny the remaining allegations set forth in this
24 paragraph.

25 9. Defendants are without knowledge or information sufficient to form a belief
26 as to the truth of the allegations in this paragraph and on that basis, deny each and every

1 allegation contained herein.

2 **DEMAND FOR JURY TRIAL**

3 10. Defendants are without knowledge or information sufficient to form a belief
4 as to the truth of the allegations in this paragraph and on that basis, deny each and every
5 allegation contained herein.

6 **COMPLIANCE WITH STATE TORT CLAIMS ACT**

7 11. Defendants are without knowledge or information sufficient to form a belief
8 as to the truth of the allegations in this paragraph and on that basis, deny each and every
9 allegation contained herein.

10 **STATEMENT OF FACTS**

11 12. Defendants are without knowledge or information sufficient to form a belief
12 as to the truth of the allegations in this paragraph and on that basis, deny each and every
13 allegation contained herein.

14 13. Defendants deny the allegations set forth in this paragraph.

15 14. Defendants deny the allegations set forth in this paragraph.

16 15. Defendants are without knowledge or information sufficient to form a belief
17 as to the truth of the allegations in this paragraph and on that basis, deny each and every
18 allegation contained herein.

19 16. Defendants deny the allegations set forth in this paragraph.

20 17. Defendants deny the allegations set forth in this paragraph.

21 18. Defendants are without knowledge or information sufficient to form a belief
22 as to the truth of the allegations in this paragraph and on that basis, deny each and every
23 allegation contained herein.

24 **FIRST CAUSE OF ACTION**

25 **Violation of Decedent's Civil Rights – 4th and 14th Amendments**
26 **(42 U.S.C. Section 1983)**

19. Defendants incorporate by reference the allegations set forth in paragraphs

1 1 through 18, above.

2 20. Defendants deny the allegations set forth in this paragraph.

3 21. Defendants deny the allegations set forth in this paragraph.

4 22. Defendants deny the allegations set forth in this paragraph.

5 23. Defendants deny the allegations set forth in this paragraph.

6 24. Defendants are without knowledge or information sufficient to form a belief
7 as to the truth of the allegations in this paragraph and on that basis, deny each and every
8 allegation contained herein.

9 **SECOND CAUSE OF ACTION**
10 **Violation of Plaintiffs' Civil Rights – 14th Amendment**
11 **(42 U.S.C. Section 1983)**

12 25. Defendants incorporate by reference all allegations set forth in paragraphs 1
13 through 24 above.

14 26. Defendants deny the allegations set forth in this paragraph.

15 27. Defendants are without knowledge or information sufficient to form a belief
16 as to the truth of the allegations in this paragraph and on that basis, deny each and every
17 allegation contained herein.

18 **THIRD CAUSE OF ACTION**
19 **Violation of civil Rights – Monell claim**
20 **(42 U.S.C. Section 1983)**

21 28. Defendants incorporate by reference all allegations set forth in paragraphs
22 1 through 24 above.

23 29. Defendants deny the allegations set forth in this paragraph.

24 30. Defendants deny the allegations set forth in this paragraph.

25 31. Defendants deny the allegations set forth in this paragraph.

26 32. Defendants deny the allegations set forth in this paragraph.

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FOURTH CAUSE OF ACTION
Wrongful Death
(Cal. Code of Civil Procedure Section 377.60)

33. Defendants incorporate by reference the allegations set forth in paragraphs 1 through 32, above.

34. Defendants deny the allegations set forth in this paragraph.

35. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and on that basis, deny each and every allegation contained herein.

PRAYER

WHEREFORE, defendants pray that:

1. Plaintiffs take nothing by their Complaint;
2. Defendants have judgment against Plaintiffs;
3. Defendants be awarded their costs of suit; and
4. For such other and further relief as the Court may deem proper.

Dated: May 21, 2009

JOHN A. RUSSO, City Attorney
RANDOLPH W. HALL, Chief Assistant City Attorney
JENNIFER N. LOGUE, Deputy City Attorney
WILLIAM E. SIMMONS, Supervising Trial Attorney

By: /s/William E. Simmons
Attorneys for Defendants,
CITY OF OAKLAND, et al.